

**SANITIZED DEC. – 03-372 N – BY – ROBERT W. KIEFER, JR. -- SUBMITTED FOR
DECISION ON DOCUMENTS ONLY 07-16-03– ISSUED – 01-14-04 -**

SYNOPSIS

CORPORATION NET INCOME TAX – WAIVER OF ADDITIONS TO TAX --

The failure of the State Tax Commissioner to notify a taxpayer almost immediately upon default that it has not timely filed its tax return or remitted the tax due and owing to it does not constitute reasonable cause or lack of willful neglect justifying the waiver of additions to tax.

FINAL DECISION

The Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued a corporation net income tax assessment against the Petitioner. The assessment was for the fiscal year of September 1, 1998, through August 30, 1999, for tax, interest, computed through May 15, 2003, and additions to tax. The Petitioner had previously remitted the amount of tax due. Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked June 5, 2003, received on June 19, 2003, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment.

Subsequently, notice of a hearing on the petition was sent to the Petitioner. On July 16, 2003, the Petitioner notified this Office that it waived its right to appear in person at a hearing and asked that this matter be submitted on the evidence it presented.

FINDINGS OF FACT

1. The assessment in this matter shows that the due date of the Petitioner's return, which was also the due date of the remittance, was November 15, 1999.
2. The assessment also shows that the Petitioner remitted the tax due in an envelope postmarked September 15, 2000.
3. The remittance of the corporation net income tax due was 10 months late.

4. The Commissioner assessed interest, which amount has not been challenged.
5. The Commissioner assessed additions to tax, which amount is 4.5% of the amount of tax due.

DISCUSSION

The sole issue raised by the Petitioner in this matter is the waiver of additions to tax. Additions to tax were assessed because the Petitioner failed to timely pay its corporation net income tax for the year ending August, 1999. These additions to tax may be waived upon a showing that the failure to pay the amount shown due on a tax return is due to reasonable cause and not due to willful neglect. *See* W. Va. Code § 11-10-18(a)(2).

The sole ground articulated by the Petitioner is that the Tax Commissioner did not give it timely notice of the late payment of its corporation net income tax for the tax year ending August, 1999. The Petitioner does not point to any duty imposed by statute on the Tax Commissioner to give the Petitioner notice of this sort. Only the Legislature can impose a duty of this nature on the Tax Commissioner. This Office does not have the authority to create some duty to be imposed on the Tax Commissioner. Imposing such a duty on the Tax Commissioner would not merely be in excess of this Office's statutory authority, it would be a burden on the Tax Commissioner that is extremely onerous. The Tax Commissioner has no specific duty to notify a taxpayer almost immediately upon default that it has not made a timely payment of taxes.

The Petitioner has a duty to know when its tax return and the remittance of tax are due. If the Petitioner did not know when its tax payment was due, it should have. It is the Petitioner's failure to comply with its statutory duty that has resulted in the assessment in this action.

Even if the Tax Commissioner had a duty to notify the Petitioner almost immediately upon default that its payment was late, such notification would not eliminate the fact that the reason for assessment of additions to tax has already occurred. The additions to tax assessed by the Commissioner were computed based on the period from the due date of the Petitioner's tax payment through the date of actual payment. No additions to tax were assessed for any period beyond the date of payment. Thus, even if the Tax Commissioner had notified the Petitioner that its payment was late, the period for which additions to tax were assessed had already passed. Stated differently, no additions to tax were assessed for any period beyond which the Petitioner paid its tax.

The reason articulated by the Petitioner for waiver of additions to tax does not satisfy the statutory standard. The Petitioner has not shown that its failure to make a timely payment of its corporation net income tax was due to reasonable cause and not due to willful neglect.

CONCLUSIONS OF LAW

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the Petitioner to show that the assessment is erroneous, void, unlawful, or otherwise invalid. *See* W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 63 (April 20, 2003).
2. In this matter, the Petitioner has the burden of showing that its failure to timely pay its corporation net income tax was due to reasonable cause and not due to willful neglect. *See* W. Va. Code § 11-10-18(a)(2).
3. The Petitioner has failed to carry carried its burden of showing that additions to tax should be waived.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the corporation net income tax assessment issued against the Petitioner for the year ending August, 1999, for interest and additions to tax, should be and is hereby **AFFIRMED**.